EDITOR'S NOTE

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No. 91-1502 (8)

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

BARBARA FRANKLIN, SECRETARY OF COMMERCE, ET AL., APPELLANTS

v.

COMMONWEALTH OF MASSACHUSETTS, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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| COMMONWEALTH OF MASSACHUSETTS, EDWARD F. BERLIN and KAREN J. KEPLER,<br><br>Plaintiffs,<br><br>v.<br><br>ROBERT MOSBACHER, as Secretary of the United States Department of Commerce; MICHAEL DARBY, as Undersecretary of Economic Affairs of the United States Department of Commerce; THE BUREAU OF THE CENSUS; BARBARA BRYANT, as Director of the Bureau of the Census; GEORGE HERBERT WALKER BUSH, as President of the United States; and DONNALD K. ANDERSON, as Clerk of the United States House of Representatives<br><br>Defendants. | ) | Civil Action No: 91-11234 WD |

STIPULATION OF FACTS

The parties stipulate, for purposes of this litigation only, that the facts set forth in these stipulations are true. By so stipulating, the parties do not admit that anything set forth herein, or in any document referenced in or attached to this Stipulation, is relevant or material to any issue in this case. As to the documents attached as Exhibits to this Stipulation or referenced in the Administrative Record, the parties stipulate that those documents are true and authentic copies of the originals, were authored by the agencies and/or persons whose names appear thereon, and are what they purport to be.

COUNTING FEDERAL OVERSEAS EMPLOYEES

1. The federal decennial census is conducted pursuant to the requirement imposed by the Fourteenth Amendment and Article I, Section 2, Clause 3 of the U.S. Constitution to enumerate "the whole number of persons in each state" as the basis for apportionment of seats in the U.S. House of Representatives.

2. Subject to the requirements of Article I, Section 2, Clause 3, and the 14th Amendment to the U.S. Constitution, Congress may enact legislation governing the rules and practices of the Census Bureau in conducting the decennial census. Through 13 U.S.C. §§ 141 et seq., Congress has delegated responsibility for conducting the census to the Secretary of Commerce. In turn, the Secretary of Commerce has delegated that responsibility to the Director of the Bureau of the Census.

3. To enumerate the population of the United States for Congressional apportionment, the Census Bureau establishes enumeration rules ("who" should be counted) and residence rules ("where" should they be counted) to deal with the various situations that will or may prevail at the time of the census. Attached as Exhibit A is a true copy of a Census Bureau

memorandum that states the enumeration and residence rules to be used for the 1990 census.

4. Since the first census in 1790, the Census Bureau has used the concept of "usual residence" as the guiding principle in formulating enumeration and residence rules for the conduct of each census.

5. The "usual residence" concept, as applied by the Census Bureau, provides that persons should be included in the census counts at the place where they are living and sleeping most of the time, as of the date that the census is taken.

6. In conducting the 1990 census and previous censuses, the Census Bureau provided instructions to respondents and census takers that described the concept of "usual residence," as well as other enumeration and residence rules, to determine who should or should not be included on the census questionnaire for particular living quarters.

7. While completing a questionnaire or answering questions from census takers, respondents, rather than the Census Bureau, determine their "usual residence." This information is used for purposes of congressional apportionment. Respondents also interpret the enumeration and residence rules supplied on the questionnaire or by the census taker in determining who they should report as being residents of a particular living quarters. Attached as Exhibit B are true copies of the instructions provided to respondents with the 1990 census



questionnaire, and residence rules provided to census enumerators for the 1990 census.

8. In an August 15, 1983 intra-agency memorandum regarding residence rules issues for the 1990 Census, the Census Bureau defined "usual residence" operationally as where a person spends four nights a week, or more than 182 days in the calendar year. The instructions to the Official 1990 U.S. Census form define "usual residence" as the place where the person lives and sleeps most of the time. Under literal application of these definitions in 1990, the "usual residence" of military personnel stationed overseas is their overseas post.

9. During the 1990 census, the Census Bureau followed the procedure described above to count and apportion persons who were residing within the fifty states on the census date, including federal civilian and military employees and their dependents. The Census Bureau did not determine the usual residence of U.S. military personnel and federal civilian employees and their dependents stationed overseas (hereinafter "overseas federal employees") using the enumeration and residence rules set forth in Exhibit A or the questionnaire set forth in Exhibit B. Instead, in 1990 the Bureau apportioned overseas federal employees to states following other procedures that are described below.

10. For the 1990 and prior censuses, with the exception listed below, the Bureau's enumeration and residence rules stated that Federal military personnel stationed in the United

States and its territories were to be counted at the living quarters where they were usually living and sleeping at the time of the census. For example, persons stationed on military bases within the United States were counted at their living quarters whether on or off base. The same enumeration and residence rules stated that such military personnel should not be included in living quarters where they might be considered household members (such as a place they had lived before entering military service or where they intended to live after leaving military service), if they were living elsewhere while serving in the military. Except as described below this also was true of military personnel residing (usually living and sleeping) outside the United States at the time of the 1990 and prior censuses. For the 1900 census, the instructions to enumerators stated as follows: "If a soldier, sailor, or marine (officer or enlisted man), or civilian employee in the service of the United States at a station at home or abroad, is a member of a family living in your district, he should be enumerated as a member of that family, even though he may be absent on duty at the time of the enumeration."

11. With the exception of the instruction for the 1900 census set forth immediately above, the instructions set forth in the preceding paragraph were not used to enumerate sailors. The 1990 instructions for sailors appear at pages 7-8 and 14-17 of Exhibit A to this Stipulation. That Exhibit also describes



other instructions that have been used to enumerate sailors in prior censuses.

12. For the 1990 and prior censuses, except 1900, the Bureau's enumeration and residence rules stated that overseas federal employees, who might be considered a household member for a particular living quarters, but who were residing (usually living or sleeping) elsewhere at the time of the census, should not be included on the questionnaire for that living quarters. This included any employees residing outside the boundaries of the United States at the time of the census.

13. Overseas federal employees who, as of the census date, were living or stationed in areas which were outside the fifty states but within U.S. sovereignty, for example Puerto Rico, Guam, Virgin Islands and American Samoa, have in past censuses been enumerated in the areas they resided on the census date and not apportioned to any state. In 1900, such employees were enumerated outside the United States, and domestic enumerators also received the instruction set forth in paragraph 10. In 1990, such persons were enumerated and also allocated back to their "home" state for apportionment purposes.

14. During the time period between the ratification of the Constitution and the later ratification of the Fourteenth Amendment, the federal government did not change its definition or its application of the "usual residence rule" in the conduct of censuses.

15. In 1790 and subsequent censuses, enumerators counted indentured servants and slaves for apportionment purposes at the place where they were living as of the census date.

16. During the nineteenth and early twentieth centuries, significant numbers of American soldiers served at duty stations and military posts located outside of any state of the United States. The Department of War also employed civilians at such stations and posts. Some such soldiers and civilians had dependents who lived with them. Such stations and posts were located in the western territories of the United States, Alaska, Hawaii, the Canal Zone, and the Phillipines, as well as other locations.

17. During the nineteenth and twentieth centuries, the War Department maintained records of the states in which its soldiers and employees had lived before entering federal service or considered their permanent homes. Prior to the 1970 census, federal authorities did not use such records to apportion soldiers and employees to particular states.

18. In 1830 and 1840 and in every census since 1900, the Census Bureau has obtained administrative counts of at least a portion of the American population living overseas as of each census date. With the exceptions of 1970 and 1990, the Census Bureau has included such persons, including overseas federal employees, only as part of the total population of the United States, and has not included them in the population of any



state, either for apportionment of congressional seats or for any other tabulation or use of census data.

19. For purposes of apportionment of soldiers to states, the United States government first promulgated a specific written rule in connection with the 1880 census. The rule was: "All soldiers of the U.S. Army, and civilian employees, and other residents at posts or on military reservations will be enumerated in the district in which they reside, equally with other elements of the population."

20. The Census Bureau has not adopted any formal regulation governing the apportionment of overseas federal employees or dependents to particular states.

21. For the 1950 through 1990 censuses, enumeration and residence rules instructed respondents and enumerators that students staying (usually living and sleeping there) at a particular living quarters (at the time of the census) while attending college were to be included on the questionnaire for that living quarters. The same rules instructed respondents and enumerators for living quarters where a student might be considered a household member (such as their family home) not to include them if they were living somewhere else while attending college.

22. For the 1900 through 1940 censuses, respondents and enumerators were instructed that students who were enrolled in colleges and living away from their families on the census date were to be included on the census questionnaire for their

parent's residence rather than the census questionnaire for their college residence.

23. For the 1900 and subsequent censuses, respondents and enumerators were instructed that students in boarding schools and staying (usually living and sleeping there) away from their families on the census date were to be included on the census questionnaire for their parents' residence rather than the census questionnaire for their boarding school residence.

24. For the 1850 and subsequent censuses, the Census Bureau's enumeration and residence rules stated that persons residing (usually living and sleeping) in institutions such as a prison, a mental hospital, or a nursing home at the time of the census were not to be included on census questionnaires completed for addresses where they might be considered a household member, such as the place they had lived before commitment, or where they intended to live after their release from the institution. Instead, these institutionalized persons were counted on census questionnaires at the institutions where they resided.

25. Congress has debated proposals which would have amended the Constitution to exclude illegal aliens from census apportionment counts. No such proposal has been approved by Congress or enacted into law.

26. The 1970 and 1990 censuses are the only times that the Census Bureau has included, as a separate group, counts of overseas Federal employees living in foreign countries on the



census date in the population counts used for purposes of congressional apportionment.

27. In a letter of October 15, 1969 to the Deputy Assistant General Counsel of the Department of Commerce, then-Assistant Attorney General William H. Rehnquist concluded that "the Director of the Census may, in his discretion, validly adopt" a procedure to secure information as to the "home state" of military personnel, civilian employees of the government, and their dependents, and to allocate such persons to their respective home states for inclusion in the population counts used for apportionment. A true copy of that letter appears at pages 14-15 of the Administrative Record.

28. In 1970, during the Vietnam War, the Census Bureau included counts of overseas federal employees for the apportionment of congressional seats (but not for other tabulations or uses of census data). The State of Connecticut lost a seat, and the State of Oklahoma gained a seat, as a result of the inclusion of these persons. The number of congressional seats allocated to the Commonwealth of Massachusetts was not affected by this 1970 decision. Members of the Army, Air Force, and Marine Corps stationed overseas were apportioned based on their home of record. The dependents of the land based military, crews of Navy vessels assigned to the 6th and 7th fleets, and overseas Federal civilian employees and their dependents were self-enumerated using the Overseas Census Report, a form requesting their "home state."

29. A July 1976 report by the federal Advisory Commission of Intergovernmental Relations showed that some military personnel selected as their "home state" one with low or no income taxes rather than their "true" home state. In Congressional testimony in September 1976 and in Census Bureau documents prior to the 1980 Census, officials from the Census Bureau stated that "data on the home state listed in the personnel records of American military personnel stationed overseas are of unknown reliability." Officials from the Census Bureau testified in September 1976 that for this reason, and because the number of Americans abroad had been cut in half, from 1.6 million in 1970 to 930,000 as of September 30, 1975, the Bureau had determined not to include overseas military in the apportionment population. See A.R. 49-65.

30. In the 1980 census, the Census Bureau did not include counts of any overseas federal employees for the apportionment of congressional seats.

31. Census Bureau began planning for the 1990 census in the Fall of 1983. As of October 15, 1987, the Census Bureau had decided not to include any of the overseas population in the census counts used for apportionment.

32. The document that appears on pages 213-36 of the Administrative Record is a Policy Paper dated April 7, 1987, prepared by the Director of the Bureau of the Census concerning Enumeration and Residence Rules for the 1990 Census. That



Policy Paper states the official policy of the Census Bureau as of the date it was created.

33. During the 100th Congress, several bills were introduced that would have required the inclusion of overseas military personnel in census counts for apportionment purposes. These bills included H.R. 3814, H.R. 4234, H.R. 3815, H.R. 4720, and S. 2103. See A.R. 367, 296-97, 284-85, 414-19, 291-92. Both H.R. 3814 and H.R. 4234 also would have required the exclusion of illegal aliens from census counts used for apportionment. The House Committee on Post Office and Civil Service which had oversight responsibility for the Census Bureau, passed H.R. 4720 on September 14, 1988. The full House considered H.R. 4720 on September 28, 1988, but a majority (317 to 93, with 21 not voting) voted not to suspend rules, and thus did not pass the bill. The 100th Congress did not enact any legislation addressing the question of whether or not overseas federal employees should be apportioned to states in the census, or how any such apportionment should be done.

34. In a June 8, 1988 letter to the Chairman of the Committee on Post Office and Civil Service, the General Counsel of the Department of Commerce stated that the Department opposed the enactment of H.R. 4720 (A.R. 414-19). A true copy of that letter which stated the official views of the Department on H.R. 4720, appears at pages 365-66 of the Administrative Record.

35. The letter attached as Exhibit C is a true copy of a letter dated April 14, 1988 from the U.S. Department of Justice to James Miller, Director of the U.S. Office of Management and Budget.

36. In two August 11, 1988 letters concerning the enumeration of overseas personnel, the Census Bureau stated that "according to the usual residence concept, the 1990 census counts for apportionment will not include military personnel living outside the United States. . . on census day."

37. During the 101st Congress, the following bills were introduced that would have required the inclusion of overseas military in the counts used for congressional apportionment: H.R. 1468, H.R. 2661, H.R. 3016 and S. 290. See A.R. 474-79, 491-92, 506-09, 839-40, 459-60, 845-46. H.R. 1468 and H.R. 3016 would also have required the inclusion of overseas civilian employees of the United States in apportionment counts. Two of those bills, H.R. 1468 and H.R. 2661, also required exclusion of illegal aliens from the counts used for apportionment. In addition, the following bills were introduced requiring the exclusion of illegal aliens from the counts used for apportionment: H.C.R. 195, H.J.R. 199, H.R. 744, S. 848. See A.R. 775-76, 472-73, 461-63, 484-86. None of the bills listed above passed either the House or the Senate. The 101st Congress did not enact any legislation addressing the question of whether or not overseas federal employees should be apportioned to states in the census.



38. On July 31, 1989, while the 101st Congress was in session, Secretary of Commerce Robert Mosbacher decided to include counts of overseas Federal employees in the 1990 census count for purposes of congressional apportionment. A true and complete copy of a document showing the Secretary of Commerce's statement of reasons for the decision appears at pages 511-12 of the Administrative Record. On August 1, 1989, the Department of Commerce publicly announced this decision. A true copy of the press release issued by the Department at that time appears at page 735 of the Administrative Record.

39. At a September 7, 1989 congressional committee hearing on H.R. 2661, Census Bureau Deputy Director C.L. Kincannon announced that the Census Bureau would include counts of overseas Federal employees for apportionment purposes. A true copy of the September 7, 1989 Kincannon testimony appears at pages 758-74 of the Administrative Record.

40. A true copy of a letter sent in March 1990 from the Secretary of Commerce to the Secretary of Defense appears at 834 of the Administrative Record.

41. A true copy of a letter sent in May 1990 from the Director of the Census Bureau to Congressman William Ford appears at 832-3 of the Administrative Record.

42. As a result of the Census Bureau's decision to include overseas federal employees in census counts for purposes of congressional apportionment in the 1990 census, the Commonwealth of Massachusetts will lose one seat (relative to

the previous apportionment in 1980 and to the number of seats it would have received if overseas federal employees had not been apportioned to states) in the House of Representatives. If overseas federal employees were excluded from apportionment counts, the State of Washington would lose one seat in the House, as compared to its apportionment if such employees were included.

43. In discussions with the Census Bureau and members of Congress concerning the 1990 census, the Department of Defense discouraged the use of "home of record" as the criterion for apportioning military personnel to specific states because: 1) its personnel records had a high rate of error with respect to "home of record;" 2) home of record may be a place where a person has not lived for many years and, in some cases, may be a place where the person has never lived; and 3) home of record information was missing for 7 to 10% of the active force and was entirely unavailable for civilian DOD personnel.

44. In Congressional testimony in 1989, DOD officials testified that "none of the data elements contained in DOD personnel records (i.e., home of record, tax residence, voting residence) meets a reasonable test of validity for apportionment purposes."

45. In 1989, prior to the Census Bureau's decision to include overseas federal employees in the apportionment population, the Department of Defense planned to do an actual enumeration of its overseas employees. DOD stated to the



Bureau that it intended to survey its military and civilian employees, either in person or by questionnaires, to determine which state, if any, they considered their permanent home. The DOD's stated intent to conduct an actual enumeration of its employees was a significant reason for the Secretary of Commerce's July 31, 1989 decision to change the Department's prior policy and to include DOD's overseas employees for apportionment purposes. A memorandum approved by the Secretary stated that he also based this decision on the "growing bipartisan Congressional support" for including the overseas military in the apportionment counts and on then-Assistant Attorney General Rehnquist's legal opinion on the issue.

46. In December 1989, DOD cancelled its plans to do an actual enumeration of its employees for the 1990 census apportionment due to a lack of funds.

47. Following the cancellation of its planned enumeration, DOD stated to the Census Bureau that it could provide data on the "last six months" of residence in the United States that were superior to its data on "home of record." For this reason, and because at that time the Census Bureau believed that the "last six months" data was more closely compatible with the concept of "usual residence," than the data elements contained in the DOD's personnel records, the Census Bureau determined as of March 29, 1990, that it would base the apportionment of overseas military employees in the 1990 census upon the "last six months" rule rather than home of record.

48. Between June 19, 1990, and July 10, 1990, DOD informed the Census Bureau that it did not have the ability to assemble data on the last U.S. address of six months' duration for its overseas employees.

49. On May 23, 1990, two bills were introduced in Congress concerning the method by which members of the overseas military would be apportioned to their "home states." H.R. 4903 and S. 2675 both would have required the Census Bureau to apportion members to their home states using the member's "home of record." On June 26, 1990, the House passed H.R. 4903. The 101st Congress did not enact any legislation addressing the question of how such apportionment should be done.

50. On or about July 10, 1990, after DOD had informed the Census Bureau that it could not provide data on last U.S. address of six months' duration, the Census Bureau decided that it would apportion DOD's overseas employees to particular states based on their "home of record" as listed in DOD records.

51. After informing the Census Bureau that it could not provide data on its members' last U.S. residence of six months' duration, DOD identified three alternative means for determining the home state affiliation of its overseas military personnel: legal residence, home of record, and last duty station. A.R. 921. In a July 23, 1990 letter to Representative Thomas Sawyer, Michael Darby, Under Secretary for Economic Affairs, stated the Commerce Department's reasons for its decision to apportion overseas federal employees based



on home of record. The letter that appears at A.R. 925 is a true copy of the July 23, 1990 Darby letter. See A.R. 925.

52. In an August 1, 1989 press release, the Census Bureau stated that the DOD estimated that it had 1.2 to 1.6 million overseas employees.

53. The actual number of overseas federal employees included in the 1990 census apportionment count was 922,819. 919,810 of these were apportioned to states; the remainder were apportioned to the District of Columbia. The number of overseas employees attributed to the DOD was 901,880.

54. In the February 29, 1991 Final Status Report on the Overseas Count Project, the Census Bureau stated "that the DOD total count of 901,880 overseas personnel/dependents was less than estimated because: 1) the DOD estimated range was for a period when the levels of military deployments overseas were higher than on Census day, 2) the DOD estimated range included U.S. Navy personnel who, in accordance with the census rules of residence, were not considered to be overseas and were covered by census procedure that applied to the U.S. resident population, and 3) given the 20-percent response to the civilian survey, overseas civilians and dependents were missing from DOD's final submission of counts to the Census Bureau."

55. Of the 40 federal agencies that were invited to submit counts of overseas employees for apportionment purposes in the 1990 census, 30 actually submitted such counts. Of the 30 reporting, 20 included dependents and 10 did not. Four of the

reporting agencies could not provide a home state for all of their overseas employees.

56. In the 1990 census, overseas military personnel and their dependents were assigned to states for purposes of apportionment based on home of record. If the Department of Defense ("DOD") did not have a home of record for a member of the military, the member's, and his or her dependent's, home state was determined on the basis of the member's legal residence (with last duty station being used if legal residence was not available). Pursuant to the above procedures, there remained 1,846 military personnel and dependents who were counted but were not apportioned to states because their home state could not be determined.

57. Because the DOD did not have home of record information available for its civilian employees for the 1990 Census, it sought to determine the home states of civilian employees stationed overseas through their responses to a questionnaire circulated by DOD. The DOD sent questionnaires to 61,205 of its overseas civilian employees. The DOD did not send questionnaires to dependents of its civilian employees; rather, those persons were intended to be assigned according to the employees' responses. The DOD received completed questionnaires from approximately twenty percent of all such civilian employees. Those employees who did not respond, and their dependents, were not assigned to any state for apportionment purposes. Employees who did respond were asked



to identify a home of record, legal residence, and last duty station. As with military personnel records, home of record was used first, then legal residence, and finally last duty station. Other federal agencies were instructed to determine the home states of their employees, and their dependents, stationed overseas, based solely on their administrative records.

58. In conducting the 1990 census, the Census Bureau did not require or verify that federal overseas employees and their dependents were apportioned to the state in which they had elected to vote. Nor did the Census Bureau require or verify that individuals in the United States were apportioned to the state in which they had elected to vote.

## APPORTIONMENT FORMULAS

59. The Census Bureau conducts the decennial census to determine the whole number of persons in each state, and then calculates the apportionment of seats in the U.S. House of Representatives among the states. The calculation of the apportionment is based upon the method of equal proportions, also known as the Hill-Huntington method (hereinafter the "Hill method"), as required by Title 2, United States Code, Sections 2a(a), 2b. These results then are conveyed to the President through the Secretary of Commerce. The President then transmits to the United States Congress (the Congress) a statement of the whole number of persons in each state and the

number of representatives in the Congress to which each state is entitled, as ascertained under the decennial census. The Clerk of the U.S. House of Representatives (the House) then notifies each state (via a Certificate of Entitlement) of the number of representatives in Congress to which it is entitled.

60. The Congress has legislated four methods for apportionment since the first census of 1790. In 1941, Congress codified in Title 2 of the United States Code laws that govern the method currently used and the process for apportionment. Article I, Section 2 of the Constitution requires that Congress apportion House seats according to population, but does not allow for fractional House seats nor districts which cross state lines. Congress must apply some method to round off each state's otherwise fractional number of seats.

61. In 1792 Congress legislated use of the Jefferson method (also known as the method of greatest divisors) of apportionment after the first census in 1790. This method was used after each subsequent census through 1830. Under this method, the population of each state was divided by a fixed ratio (a pre-specified number of persons per representative) and the resulting integer was the size of the state's delegation, regardless of the size of the fractional remainder. For example, if the ratio for a particular state was 3.4, the state would receive 3 representatives. If the ratio was 3.9, the state still would receive 3



representatives. This method did not require that the size of the House, i.e., the total number of representatives, be a fixed number (in fact, the method would have to be modified for use with a fixed House size). Instead, the size of the House was the sum of the number of representatives given to each state using the above method. The size of the House grew over time based on apportionments following the 1790, 1800, 1810, 1820, and 1830 censuses.

62. Following the 1840 census, the Congress legislated use of the Webster method (also known as the method of major fractions (hereinafter "Webster method")) for the apportionment calculation. As then employed, with no mandate that the size of the House be fixed, it used a fixed ratio (of a pre-specified number of persons per representative), but an additional seat was assigned for each fractional remainder greater than one-half. For example, if the ratio for a state was 3.2, the state received 3 representatives. But if the ratio was 3.9 (or anything greater than 3.5, but less than 4.5), the state received 4 representatives. This method also did not require that the size of the House be a fixed number (and in fact would need to be modified for use with a fixed House size); the total number of representatives again was the sum of the representatives allocated to each state under this method.

63. Congress legislated use of the Vinton method (also known as the Hamilton method) for apportionment following the

censuses of 1850 through 1900. It utilized a fixed number of representatives. In this method, the apportionment population of the United States was divided by the fixed size of the House to derive a national-average-size Congressional district. The population of each state was then divided by this national-average-size Congressional district to obtain an exact quota of representatives. (This is known as the "House seat quota"). One representative was assigned to each state whose exact quota was less than one (to meet the Constitutional requirement that each state receive at least one representative). The other states (having quotas greater than or equal to 1.0) were assigned a seat for each whole number of their respective quotas, and any remaining seats were assigned on the basis of the highest fractional remainders for those states. Under this method, it is mathematically possible that a state could receive fewer seats if the size of the House were increased and the population of all states remained constant. This anomaly is known as the "Alabama paradox", because it was observed that for the 1880 census, Alabama would receive eight seats with a House size of 299 and seven seats with a House size of 300 by the use of the Vinton method.

64. In 1910, Congress legislated use of the Webster, or major fractions, method. Congress also fixed House membership at 433, with the proviso that "if the Territories of Arizona and New Mexico shall become States in the Union before the apportionment of Representatives under the next decennial



census they shall have one Representative each.... " 37 Stat. 14 (1911). Both Arizona and New Mexico became states in 1912 and House membership has been 435 since that time, except when it was increased temporarily when Alaska and Hawaii became states in 1959.

65. Congress could not decide on an apportionment plan following the 1920 census, but in 1929 passed a law that made reapportionment automatic, using whatever method was used for the previous apportionment in the event the Congress did not agree on another method.

66. Using results of the 1930 census, both the Hill method and the Webster method produced the same apportionment. The Congress did not legislate any method of apportionment, so as a result of the 1929 legislation, the apportionment for 1930 was automatic and was based upon the Webster method (because it had been used for the previous (1910) apportionment).

67. In January 1941, the President transmitted to Congress apportionments based upon both the Hill method and the Webster method. The methods produced the same apportionment except for two states, Arkansas and Michigan. The Hill method resulted in an additional seat for Arkansas; the Webster method resulted in an additional seat for Michigan. Congress debated the apportionment methodologies and enacted legislation adopting the Hill method, by a vote in which every Democrat (except those from Michigan) voted for, and every Republican voted against, the bill. No legislation affecting the method of

apportionment has been passed by Congress since 1941. As a result, the Hill method has been used for each subsequent apportionment, including 1990.

68. One of the products of the lengthy debates in the Congress regarding apportionment following the 1920 census, was the Congress' commissioning the National Academy of Sciences (NAS) to prepare a report "regarding the mathematical aspects of the problem of reapportionment". The report of the Committee on Apportionment discussed five methods "now known which are unambiguous (that is, lead to a workable solution)": smallest divisors (Adams method), harmonic means (Dean method), equal proportions (Hill method), major fractions (Webster method), and greatest divisors (Jefferson method). With a fixed House size, apportionments under these five methods are calculated using formulas involving each state's apportionment population and a divisor which determines each state's priority for its next seat (after one seat is assigned to each state). The divisors for the different formulas are functions of the number of seats already assigned to a given state which vary according to specific goals that each method is designed to achieve.

69. The report of the National Academy of Sciences committee, submitted to Congress in 1929, stated that the committee preferred the Hill method. The report analyzed five methods: Adams, Dean, Hill, Webster and Jefferson. It listed them in the order in which they "favor the larger States as



compared with the methods which precede it" (the Adams method favoring the small states the most, Jefferson's favoring the large states the most, and the Hill method listed third among the five); and stated that Hill's method "occupies mathematically a neutral position with respect to emphasis on larger and smaller states". (Report of the National Academy of Sciences Committee On Apportionment from the Annual Report of the National Academy of Sciences, Fiscal Year 1928-29, pp. 20-23).

70. In 1948, Congress asked the National Academy of Sciences to re-examine the various apportionment methods. An NAS committee concurred with the conclusion of the 1929 report.

71. Following both the 1970 and 1980 decennial censuses, Congress conducted hearings regarding methods of Congressional apportionment.

72. The apportionment method used in 1990, pursuant to Congressional legislation in force since 1941, was the Hill method. Using this method, Massachusetts received 10 seats under the apportionment based on the 1990 census.

73. If the Webster method for apportionment based on the 1990 census had been used (either excluding or including the counts of overseas military, other Federal employees, and dependents), Massachusetts would have received 11 seats. The Webster method may be applied as follows: a) A divisor would be found by dividing the apportionment population by 435 (the

total number of seats) to produce the national average size district. b) Each state's apportionment population would then be divided by the above divisor to obtain a quotient consisting of a whole number (possibly zero) and a fraction. c) If a state's quotient was less than 1.0, it would be rounded up to 1.0 no matter how small the fraction. d) For all other states (those with a quotient greater than or equal to 1.0), fractions less than one-half (0.5) would be rounded down, and fractions greater than one-half (0.5) would be rounded up. e) If the whole numbers resulting from this process summed to 435, the apportionment would be determined and no alteration of the divisor would be needed. f) If too many seats, or too few seats, were allocated by this process, the divisor would be made larger or smaller, respectively, until the total number of whole numbers achieved after rounding was equal to 435.

74. Under the Hill method, 1) each state first receives one Representative, as required under the Constitution. 2) A series of priority values is calculated for each state from which can be determined the state's entitlement to a second Representative, a third, and so on. 3) When the priority values are arranged in sequence (from highest to lowest), they indicate which state should get the 51st Representative, which the 52nd, etc. up through the 435th Representative. 4) The priority values are determined by multiplying the apportionment population of each state by the reciprocal of the geometric mean of the number of seats already assigned, a, and the next



integer, a+1, i.e., 1 divided by the square root of the quantity a(a+1). Alternatively, the apportionment under the Hill method could be obtained as described in paragraph 73 for the Webster method, with one-half (0.5) replaced by the following quantity: the square root a(a+1), minus a, where a is the largest integer not exceeding the state's quotient. For example, if the quotient is 2.7, then the square root of (2X3) minus 2 is approximately 0.449.

75. For quotients greater than one, the Hill rounding point is less than .50. The larger the whole number in a state's quotient, the larger is the Hill rounding point. For example, if a state's quotient falls between 1 and 2, then its Hill rounding point is the square root of 1 X 2, minus 1, which is approximately .414. If a state's quotient falls between 20 and 21, then its Hill rounding point is the square root of 20 X 21, minus 20, which is approximately .494.

76. For quotients greater than one, the Webster rounding point is always .50 exactly.

77. The rounding points in the previous two paragraphs are not always indicative of how the Webster and Hill methods would round the exact quota of a state. For the 1990 census, New York, New Jersey, Massachusetts, and Oklahoma have exact quotas of 31.521, 13.536, 10.532 and 5.516, respectively. The fractional portion of the quota for each of these four states is above the rounding points for both the Webster and the Hill methods. Yet, the Webster method rounds down the exact quota

for each of these states except Massachusetts and the Hill method rounds down the exact quota for each of these states except Oklahoma. Other examples exist in previous censuses where the exact quota is below the rounding point for both Webster and Hill and where either the Hill or Webster methods, or both, round up the exact quota.

78. If the Webster and Hill methods yield different apportionments, then the Hill method, as compared with the Webster method, awards fewer seats to the state or states with larger populations and more seats to the state or states with smaller populations. For example, in 1990, Webster's method gives one more seat to Massachusetts, which has a larger population, rather than to Oklahoma, which is given the extra seat under the Hill method.

79. Exhibit D displays the number of seats which would have been apportioned to Massachusetts based on the 1990 census under seven different apportionment methods. The number of seats that Massachusetts would receive varies depending on the method used and whether the overseas military, Federal employees, and dependents are included (Apportionment Population) or excluded (Resident Population).

80. By dividing the apportionment population by the total number of seats in the House of Representatives (435), a national-average-size congressional district can be obtained.

81. When the national-average-size congressional district is divided into the apportionment population of a state, the



mathematical result is that there is (except for the three smallest states) a whole number of congressional seats plus a fraction of a seat, known as the "House seat quota."

82. All methods of apportionment result in House seat quotas which contain fractions which must be rounded to whole numbers. Any rounding of a House seat quota results in some states receiving more seats than their House seat quota and some states receiving less seats than their House seat quota.

83. Exhibit E displays Massachusetts' House seat quota and the number of seats which would have been apportioned to it under the Hill and Webster methods from 1940 - 1990.

84. According to 1990 decennial census, Massachusetts was the thirteenth most populous state.

85. Massachusetts has been among the thirteen most populous states according to every decennial census since 1940.

86. In every one of the six apportionments from 1940-1990, the total number of seats allotted to the thirteen most populous states by the Hill method was less than the sum of their House seat quotas. In five out the six apportionments from 1940 - 1990, the total number of seats allotted to the thirteen most populous states by the Webster method was less than the sum of their House seat quotas.

87. Under the 1990 Census, Massachusetts will receive twelve electoral votes under the Hill method. Under the Webster method it would receive thirteen electoral votes.

DATED this 1st day of November, 1991.

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UNITED STATES DEPARTMENT OF COMMERCE
Bureau of the Census
Washington, D.C. 20233

OFFICE OF THE DIRECTOR

OCT 15 1987

1990 DECENNIAL CENSUS
POLICY MEMORANDUM NO. 12

MEMORANDUM FOR: Distribution List

From: Charles D. Jones CJ
Associate Director for Decennial Census

Subject: Enumeration and Residence Rules for the 1990 Census

The attached policy paper defines the enumeration and residence rules for the 1990 Decennial Census of Population and Housing (Attachment 1). These rules address the fundamental issues of whom we will enumerate in the 1990 census and where we will enumerate them.

In preparing this policy paper, the Census Bureau reexamined the constitutional, legal, and historical basis for the enumeration and residence rules established for the first decennial census of 1790 and used with minor modifications for all subsequent decennial censuses. In developing this policy paper for 1990, the Census Bureau considered carefully the operational as well as the legal implications of the traditional rules. In December of 1986, the Census Bureau also contracted for a conference of experts--demographers, statisticians, data users, and analysts from both the public and private sectors--and solicited their advice and recommendations for the appropriate enumeration and residence rules for the 1990 census. The attachment also contains the recommendations, some of which the Census Bureau incorporated in the policy paper, from that conference (Attachment 2).

The Census Bureau will incorporate these enumeration and residence rules in the design of forms, procedures, and instructions for the 1990 census.

Attachments

[redacted]
EXHIBIT
A

Attachment 1

## ENUMERATION AND RESIDENCE RULES FOR THE 1990 CENSUS
## EXECUTIVE SUMMARY

The enumeration and residence rules for the 1990 census provide the basis for determining Who to count in the 1990 census and Where to count them.

The application of enumeration and residence rules must support the goal of obtaining the most accurate counts possible for all geographic areas. To determine these rules, the Census Bureau examined past practices in light of questions about legal residence within the United States as a criterion for enumerating a person, whether to count a person where found or contacted on Census Day or at another location based on established criteria, and the application of these rules to specific population subgroups. The Census Bureau also sought advice from experts outside the Census Bureau as part of this examination of past practices. The results of this examination are the enumeration and residence rules described in this document.

The first census of 1790 established enumeration and residence rules. From the outset, enumeration rules were based on constitutional and statutory requirements. The constitutional basis for the first census required the enumeration of all residents of the United States, not just citizens. The Census Bureau has followed this principle in all subsequent censuses and will follow it for the 1990 census.

Residence rules also were based on statutory requirements. The Census Act of 1790 covering the first decennial census established the concept of usual residence as the guiding principle for determining where to count a person. The usual residence concept requires the Census Bureau to count a person where he or she lives and sleeps most of the time or where he or she considers the usual residence. The Census Bureau has followed this concept, with minor exceptions, in all subsequent censuses and we are adopting it again for the 1990 census.

In selecting the enumeration and residence rules for the 1990 census, the Census Bureau has identified certain groups for whom questions have been raised concerning the application of these rules. These groups and the related enumeration and residence decisions reached for 1990 are as follows:

Enumeration Rules

- The Census Bureau will count American citizens living in the United States on Census Day.
- The Census Bureau will count military personnel and their dependents living overseas by using administrative records but will not include them in the apportionment counts or any other tabulations for states.
- The Census Bureau will count Federal employees and their dependents living overseas by using administrative records but will not include them in the apportionment counts or any other tabulations for states.
- The Census Bureau will not count other American citizens residing overseas who are not members of the Armed Forces or Federal employees, and their dependents. However, the Census Bureau will investigate the feasibility of using administrative records to obtain counts of Americans residing overseas who are employed by multi-national corporations.
- The Census Bureau will count aliens, whether documented or undocumented, residing in the United States on Census Day.
- The Census Bureau will not count foreign diplomats residing on the premises of an embassy or legation on Census Day; the Census Bureau will count those not residing on the premises of an embassy or legation on Census Day.

Residence Rules

- The Census Bureau will count persons away from their usual residence on Census Day at their usual residence.
- The Census Bureau will count persons with multiple residences at the residence that they consider to be their usual residence.
- The Census Bureau will count persons with no usual residence, such as the homeless, where they are found living or staying on or near Census Day.
- The Census Bureau will count persons living away from the parental home at a college or university at their college or university residence.



- The Census Bureau will enumerate persons living away from the parental home at a boarding school as residents of their parental home rather than as residents of their boarding school.
- The Census Bureau will count crews of American-flag maritime vessels at their usual residence, whether on board ship or on shore.
- The Census Bureau will count land-based members of the Armed Forces residing in the United States at their usual residence, whether it is on base or off base.
- The Census Bureau will count crews of military ships not deployed to the U.S. Navy's 6th Fleet (Atlantic) or 7th Fleet (Pacific) and crews of U.S. Coast Guard vessels at their usual residence, whether it is on board ship or on shore. The Census Bureau will treat crews of U.S. Naval ships deployed to the 6th or 7th Fleet as part of the overseas population.
- The Census Bureau will count persons who move on or near Census Day at the place they consider to be their usual residence on Census Day (April 1, 1990).
- The Census Bureau will count migrant workers either at the camp where the Census Bureau contacts them or at their usual residence if they report one.
- The Census Bureau will count persons residing in a long-term care or custody facility as residents of the their institution. The Census Bureau will count persons in a short-term care or custody facility at their usual residence.

# ENUMERATION AND RESIDENCE RULES FOR THE 1990 CENSUS

## I. INTRODUCTION

The decennial census of the United States is one of the few Federal programs specifically mandated by the Constitution. Article I, Section 2, clause 3 states:

> Representatives . . . shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three-fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

(Passage of the Fourteenth Amendment to the Constitution in 1868, following the abolition of slavery, modified Article I, Section 2, clause 3.) This mandate, which the Census Bureau has now fulfilled 20 times, calls for an enumeration of the Nation's inhabitants for apportioning the seats in the House of Representatives.

An ideal census includes every person. Historically, this ideal has not been achievable.[1] As far back as the first census of 1790, President Washington recognized the limitations of a complete count as an achievable goal:

> . . . one thing is certain, our real numbers will exceed, greatly, the official returns of them; because the religious scruples of some would not allow them to give in their lists; the fears of others that it was intended as the foundation of a tax induced them to conceal or diminish theirs, and thro' the indolence of the people, and the negligence of many of the officers, numbers are omitted.[2]

Although no U.S. census has ever achieved a complete or perfect count, the Census Bureau must develop procedures and strategies for the 1990 census that ensure the most accurate counts possible for all geographic areas. The purpose of this paper is to discuss the enumeration and residence rules that the Census Bureau will use to count the population in 1990. Specifically, it will present the decisions for determining who to count and where to count them in the 1990 census.



## II. THE GOAL OF THE 1990 CENSUS

The practical goal of the 1990 census is to determine, as of April 1, 1990, the number of people residing in each geographic area of the United States, Puerto Rico, and the outlying areas. As with any goal, one must select strategies that provide the best opportunity for accomplishment. The Census Bureau has examined the various enumeration and residence rules and has identified those that offer the best opportunity to achieve the goal of the 1990 census. Within legal constraints, the Census Bureau has considered carefully the technical, operational and, in some cases, historical criteria in defining the universe of interest and determining how to count that universe. Section III of this paper presents the historical guidance for defining the universe of interest and defines several mutually exclusive subsets of the population. Section IV documents the Census Bureau's plans for counting these subsets of the population in 1990.

## III. DEFINING THE UNIVERSE OF INTEREST

Over the years, the specified universe of interest for the census has changed. In the 1790 census, there were exclusions defined by the Constitution and statutory law. For example, the Constitution excluded "Indians not taxed" from the first 15 decennial censuses. The ninth decennial census of 1870 did provide for the enumeration of Indians who were not part of the established tribes and thus were taxed. The 1940 and subsequent censuses included Indians following the U.S. Supreme Court ruling in 1936 that subjected all Indians to Federal taxation. [3]

According to the Constitution, the apportionment counts of the early census excluded two-fifths of "all other persons" (that is, slaves). The provision to include only three-fifths of all slaves in the apportionment count remained until the census of 1870 following passage of the Fourteenth Amendment to the Constitution in 1868. Section 2 of the Fourteenth Amendment states:

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

Thus, except for these two groups, the Census Bureau has attempted to count all persons in each state for apportionment purposes. To achieve that goal, however, we must refine this seemingly simple rule by legal as well as operational considerations.

The planners of the first decennial census in 1790 provided a precedent that in general we have adopted for all subsequent decennial censuses in this country. In deciding where to count a person, we adopted the concept of usual residence to address the constitutional requirements. Simply stated, the concept of usual residence requires counting a person where he or she lives and sleeps most of the time or where he or she considers the usual residence. One should not overlook the importance of this concept as a cornerstone of the Nation's 20 censuses. It has provided a practical and workable solution to the problem of where to count persons. With few exceptions, it is the residence concept that the Census Bureau again is adopting for the bicentennial census of 1990.

In deciding who to count and where to count them, it is useful to list, within the legal parameters, the possibilities or universe of interest. We can divide the possibilities into three major categories: resident citizens, nonresident citizens, and resident noncitizens. The list that follows defines the <u>possible</u> groups to include in the decennial census count for apportionment purposes.

<u>RESIDENT CITIZENS</u>

Resident citizens include all persons who are U.S. citizens, either by birth or by naturalization, whose usual residence is within one of the 50 states. Although some resident citizens live in the District of Columbia, Puerto Rico, or certain of the outlying areas (Guam, the U.S. Virgin Islands, and the Northern Mariana Islands), we do not include them in the apportionment count.

<u>NONRESIDENT CITIZENS</u>

This category includes persons who are citizens of the United States but whose usual residence on Census Day is not within the 50 states.



<u>RESIDENT NONCITIZENS</u>

This category includes persons whose usual residence on Census Day is in the 50 states, but who are not citizens of the United States. This group includes aliens, whether documented or undocumented, and foreign diplomats.

The above groups define whom we should or should not include in the decennial count. Questions on where to count persons within these groups are applicable to the following subgroups:

- o The noninstitutionalized civilian population, which includes, for example:
  - Persons temporarily away from their usual residence on Census Day.
  - Persons with no permanent residence on Census Day.
  - Persons away from the parental home and living at college on Census Day.
  - Persons away from the parental home and living at boarding school (elementary or secondary) on Census Day.
  - Persons with multiple residences on Census Day.
  - Crews of U.S. merchant vessels.
  - Persons moving between usual residences on Census Day.
  - Persons residing in migrant labor camps on Census Day.
- o The institutionalized civilian population, which includes, for example:
  - Persons in correctional institutions on Census Day.
  - Persons in long-term health care institutions on Census Day.
- o The military population, which includes, for example:
  - Land-based military personnel.
  - Crews of U.S. military vessels (including the U.S. Coast Guard).

## IV. ENUMERATION AND RESIDENCE RULES FOR 1990

### A. CONCEPTUAL BASIS FOR ENUMERATION AND RESIDENCE RULES

The Census Bureau establishes enumeration rules in response to the question of whom to include in the decennial census count. In establishing the enumeration rules, the Census Bureau relies on constitutional considerations, any relevant statutory requirements, and operational factors. Traditionally, the Census Bureau has understood the Constitution to mean that it must count persons (as opposed to citizens, property owners, or adults) who are inhabitants of the United States as of Census Day.

As the enumeration rules address "who to count" the residence rules address "where to count" a person, that is, where to assign a person geographically in the census files. In addressing this question, the Census Bureau must decide whether to count the person where found or contacted on Census Day or whether to count the person at another location based on established criteria.

Both legal and operational issues influence the decision on which residency option to use. The Census Act of 1790 stated:

> That every person whose usual place of abode shall be in any family on the aforesaid first Monday in August next, shall be returned as of such family . . . . Every person occasionally absent at the time of the enumeration . . . belongs to that place in which he usually resides.

The drafters of the Census Act of 1790 implemented the constitutional mandate by developing the concept of usual residence as the criterion for determining where to count a person. All subsequent censuses have used this concept to determine where to count a person.

Carefully designed and executed procedures based on the usual residence concept afford the best opportunity to achieve the goal of obtaining accurate counts for all geographic areas in 1990. The adoption of usual residence as the main residency rule for 1990 does not mean that the Census Bureau will not modify that rule. Such has been the case for our most recent censuses--we used physical location as the criterion for where to count the homeless, used "home of record" as the criterion for where to count the overseas military population in 1970, and included boarding school



students (elementary and secondary) in the count at their parental home rather than at their school residence.

Along with the questions of whom to count and where to count them, the enumeration and residence concepts also encompass temporal considerations. We have traditional taken censuses as of a specific date, the idea being to capture an image of the population as of that specific date. The Census Act of 1790 established the first Monday in August 1790 as the census reference date, even though the U.S. marshals and their assistants did not complete the enumeration until 18 months later.[1/] The actual reference date of the census has changed frequently over the past 200 years in response to operational considerations. The reference date used in most censuses during the 19th century was June 1. January 1 was the scheduled date for the census of 1920 to accommodate an agriculture census taken at the same time.[1/] The Census Bureau first established the date of April 1 for the 1930 census and it has used that date up to the present time. Title 13, United States Code mandates the specific date for the 1990 census--April 1, 1990.

While April 1, 1990 is the reference date for the census, the complexity and time frame of the census-taking operations are such that the Census Bureau will not contact everyone on that date. The anticipated exceptions are noted in sections IVB and IVC below.

### B. ENUMERATION RULES

#### 1. RESIDENT CITIZENS

Resident citizens are part of the persons in Article I, Section 2 of the Constitution as amended by Section 2 of the Fourteenth Amendment. The apportionment count will include those living in the 50 states.

#### 2. NONRESIDENT CITIZENS

The overseas population includes Armed Forces members Federal civilian employees, the dependents of these groups as well as other American citizens living abro on Census Day. Before the 1950 census, U.S. Attorney General J. Howard McGrath, in an opinion dated August 26, 1949, said that the Congress had vested the Director of the Census Bureau with the discretion to determine procedural issues, including the enumeration of Americans abroad. Assistant

Attorney General William H. Rehnquist reaffirmed McGrath's opinion in 1969.[5]

Thus, the decision on whether to count this population subgroup is discretionary. It rests on operational feasibility and efficiency with respect to obtaining accurate counts, and, to a certain extent, on data user needs. Since 1900, the Census Bureau has obtained administrative counts of at least a portion of this population subgroup. In 1970, as a result of the unusually large number of Americans (both military and civilian) involved in Vietnam, the Census Bureau counted military and Federal civilian employees and their dependents overseas and included them in the apportionment totals.[5] The procedure followed in 1970 was not based on a change in the Census Bureau's traditional understanding of the Constitution or other laws governing the apportionment process, but rather it was an effort to comply with the spirit of the law due to the large numbers of persons overseas. The Census Bureau has not included counts of other Americans living abroad in any census apportionment totals.

In 1980, the Census Bureau obtained administrative counts of military and Federal civilian employees and their dependents overseas. Since the unusual circumstances of war time did not exist in 1980, the official census tabulations for states did not include these counts. Finally, the Census Bureau did not attempt to obtain counts of other Americans overseas in 1980.

The specific categories of Americans overseas and the Census Bureau's enumeration rules for them in 1990 follow.

MILITARY PERSONNEL AND THEIR DEPENDENTS LIVING OVERSEAS

This category includes members of the Armed Forces and their dependents stationed overseas. It also includes crews of military ships deployed to the Navy's 6th (Atlantic) or 7th (Pacific) Fleet.

The Department of the Defense frequently updates and verifies administrative record counts of the overseas military personnel and their dependents.[6] Since the Census Bureau can obtain counts of persons in this category efficiently from Department of Defense administrative records, we plan to obtain



the counts in 1990 and include them in the U.S. Summary Report on Number of Inhabitants.* We will not include the counts in the official totals for the states since the assignment to geography would be arbitrary and operationally difficult.

FEDERAL CIVILIAN EMPLOYEES AND THEIR DEPENDENTS LIVING OVERSEAS

Since the Census Bureau can obtain counts of persons in this category from administrative records provided by the Office of Personnel Management, we plan to publish counts of this population subgroup in 1990. We will not include these counts in the official totals for the states since the assignment to geography would be arbitrary and operationally difficult.

OTHER AMERICANS LIVING OVERSEAS

In the 1960 and the 1970 censuses the Census Bureau made attempts to obtain counts of Americans overseas who were not affiliated with the Federal Government. These attempts were not successful. For example, in 1970 we counted 680,000 civilians overseas, but data from foreign censuses show there were at least 1.2 million U.S. citizens overseas in 1970.[6] The decision on whether or not the Census Bureau should count this population subgroup is dependent on operational issues regarding accuracy and efficiency. Assuming that the Census Bureau could develop an operational definition, we would still face many problems trying to obtain an accurate count. We do not know any administrative records that the Census Bureau could use to obtain a count of this population subgroup, thus, we would have to use direct enumeration. Voluntary outreach and publicity efforts by U.S. embassies and legations together with religious organizations, businesses,

* The Department of Defense is presently negotiating with the Census Bureau for a direct enumeration of military personnel and their dependents living overseas. The plan would provide for counts based on an actual enumeration, rather than administrative records. The Census Bureau would not include the counts in the apportionment or other official totals for any state.

and colleges during the 1970 census were only marginally successful.6/ It is unlikely that the Census Bureau can direct effective and efficient outreach efforts toward this group in 1990. Given the many operational problems associated with obtaining an accurate count, the Census Bureau does not plan to count Americans living overseas who are not employees of the U.S. government.

The Census Bureau does plan to investigate the feasibility of obtaining administrative record counts of Americans overseas who are employees of the United States or multi-national corporations.

3. RESIDENT NONCITIZENS

The Census Bureau's traditional understanding of the Constitution and statutory law concerning the census is that it must attempt to count all residents, regardless of legal status. Throughout the past 20 censuses we have followed this traditional understanding of the Constitution. The following discussion details the Census Bureau's plans for counting persons in 1990 who are citizens of foreign countries.

RESIDENT ALIENS

This category includes citizens of foreign countries who are living in the United States on visas such as work or student visas. It also includes undocumented aliens who entered the country illegally and those who entered the country legally but violated the terms of their visas. The Census Bureau has always attempted to count all persons whose usual residence on Census Day is in the United States, without regard to their legal status or citizenship, except for foreign travelers and residents of diplomatic missions.

For purposes of apportionment of the House of Representatives, the Census Bureau understands that the Constitution requires it to attempt to count all persons in each state without regard to their citizenship or legal status. The Federation for American Immigration Reform (FAIR) and several Members of Congress challenged this procedure before the 1980 census. In their suit against the Census Bureau, the plaintiffs charged that the count should not include illegal aliens for apportionment purposes. The government attorneys' legal argument centered on the wording in the Constitution, which



specifies persons as the basis for apportionment, without distinguishing among the inhabitants other than Indians not taxed and slaves. Although the Court decided the lawsuit on procedural grounds (lack of standing), it did observe that illegal aliens "are clearly persons."7/

Based on the traditional understanding of the Constitution, the Census Bureau will attempt to count all persons, including documented and undocumented aliens, residing in the United States on April 1, 1990. We will not count undocumented aliens who have not established a residence in the United States.

FOREIGN DIPLOMATS

Foreign diplomats include citizens of foreign countries attached to an embassy, consulate, legation, or chancellery of a foreign country or employed by an international agency or mission such as the United Nations, the World Bank, or the International Monetary Fund. Beginning with the 1940 census, the Census Bureau has not counted such persons residing within the compound of an embassy or legation, since the diplomatic missions where they reside are actually foreign territory. The Census Bureau has counted in recent censuses employees of foreign embassies who do not live at the embassy.8/

For the 1990 census, the Census Bureau does not plan to count citizens of a foreign country living on the premises of an embassy or legation because such persons are not residents of the United States. We will count foreign diplomatic personnel not living on the premises of an embassy or legation. The rationale for counting such persons is that they are residents of the United States.

C. RESIDENCE RULES

The Census Bureau will use the usual residence concept as the primary rule in determining where to include residents in the count. While the goal of the 1990 census is to count residents at their usual residence as of April 1, 1990, there are situations in which we must make special provisions to ensure that we meet this part of the goal. For the 1990 census, the Census Bureau must develop residence rules for persons whose usual

residence is not the place where they are on Census Day or whose usual residence is ambiguous. The Census Bureau's plans for addressing these groups in 1990 follow.

1. PERSONS AWAY FROM THEIR USUAL RESIDENCE ON CENSUS DAY

The Census Act of 1790 provided for the counting at the usual residence of persons temporarily absent from it at the time of the census. This practice has continued for all subsequent censuses and we will repeat it in the 1990 census.

Persons who report that their usual residence is different from the place where the Census Bureau contacts them include those traveling, living temporarily in hotels and motels, or maintaining a usual home elsewhere. The Census Bureau contacts such persons where they are physically staying on Census Day but asks them to provide the address of their usual residence. We then locate the questionnaire for the reported usual residence and add the person to that questionnaire if no one has reported him or her as a member of that residence already.

There are persons, though, who will not report the address of their usual residence or who will report an address that the Census Bureau can not identify on the census address file. We refer to such an address as an unidentifiable usual residence. 9/

The Census Bureau has examined several options for counting persons with unidentifiable usual residences. We have considered carefully how well each option contributes to the goal of obtaining accurate counts for all geographic areas. Some options examined would involve counting such persons at the place where we contact them, a procedure that might lead to an overcount to the extent that a household respondent or neighbor reports the persons at the usual residence. The other option would involve not counting them at the place where we contact them, the assumption being that a household respondent or neighbor would report such persons at the usual residence. If a household respondent or neighbor does not report these persons as household members at the usual residence, adoption of this option could lead to an undercount.



In weighing these options against the goal of the census, the Census Bureau has determined that the option most in line with the enumeration and residence concepts is to assume that a household respondent or neighbor will report these persons at the usual residence. Accordingly, we have designed the 1990 enumeration and closeout procedures to count such persons at their usual residence. The Census Bureau believes that the extent of any undercount in a particular geographic area as a result of using this procedure would be substantially less than any concentrated overcount resulting from the adoption of the alternative procedure.

2. PERSONS WITH MULTIPLE RESIDENCES

Examples of persons with multiple residences include those who live for substantial periods at a residence other than their primary residence, children who spend time at each parental home, working couples in which the husband and wife maintain residences in separate cities, and Members of Congress who maintain residences in their home states as well as in the Washington, D.C. area. The recent uptrend in some of these and other similar situations challenges the usual residence concept to the extent that the usual residence of persons with multiple residences is ambiguous or unclear.

There are two options available to the Census Bureau for counting persons with multiple residences. The Census Bureau can allow such persons to choose one residence as the primary residence or we can assign usual residence on the basis of objective criteria.

As in past censuses, for 1990 the Census Bureau plans to provide respondent instructions on the census questionnaire that will allow persons with multiple residences to identify one residence as their usual residence. We will count these persons at that residence. Similarly, the Census Bureau plans to count Members of Congress either at their Washington, D.C. area address or at their home state address, dependant upon which one they consider to be their usual residence.

3. PERSONS WITH NO PERMANENT RESIDENCE

Persons without a permanent residence include those living temporarily in housing units with friends or relatives, those living in transient quarters (motels, missions, shelters, and so forth) who do not claim a usual home elsewhere, and the homeless ("street people"). Since 1790, the Census Bureau has counted such persons as residents of the area where contacted. For 1990, the Census Bureau again plans to count all persons without a permanent residence in the area where we contact them.[9]

To obtain an accurate count of persons without a usual residence, the Census Bureau plans to conduct a special enumeration of persons living in shelters for the homeless and of "street people." This special enumeration will include a pre-Census Day identification of shelters, public parks, city blocks, and so forth, where the homeless congregate. The Census Bureau plans to ask local officials and local organizations that work with the homeless for assistance in identifying these places. Finally, we will use teams of interviewers to visit these places during a special "S-Night" to count persons found living or staying there.

4. PERSONS AWAY AT COLLEGE

Since the 1950 census, the Census Bureau has counted college students where they are living while attending college; before 1950, we counted students at the parental home. The Census Bureau changed the policy in 1950 because we had evidence that we were not counting some college students at all. In addition, applying the usual residence rule to college students required that we count them at the college. Following the 1970 census, the Borough of Bethel Park Pennsylvania challenged the Census Bureau's policy of counting college students at the college. The U.S. District Court that heard the suit ruled that the Census Bureau's policy for counting college students was "reasonable" since such students eat, sleep, and work for most of the year in the area of the college.[10]

In deciding where to count college students in 1990, the Census Bureau has considered the available options in light of the goal of the census. College students, particularly those living in dormitories, have a chance of being reported and counted at the parental residence. If we do not identify these



cases, this could result in an overcount. On the other hand, to count college students at their parental home would be an unnecessary departure from the usual residence rule. In addition, some college students living in college dormitories no longer live with their parents at any time, and, hence, we can only count them at their college residence. Not counting such students at college could lead to an undercount. Finally, the practice of the Census Bureau in recent censuses of counting college students at their college residences has been upheld by a U.S. District Court.

Adherence to the usual residence concept requires that the Census Bureau continue to count college students at their residence at school in 1990.

5. PERSONS AWAY AT BOARDING SCHOOL

The Census Bureau traditionally counts boarding school students below the college level at their parental home. This procedure has continued in recent censuses because of the age of the students and their dependency on their parents.

In deciding where to count boarding school students in 1990, the Census Bureau has considered the possible ramifications of counting such students at the boarding school. Given the age and dependency status of boarding school students compared to college students, the Census Bureau believes the chance of double counting the former is more likely if counted at school than the chance of double counting college students. In addition, there is no known statutory law or legal precedent that stipulates where to count boarding school students. Given the traditional practice of counting such students at the parental home as well as the small numbers involved, the Census Bureau plans to count boarding school students at their parental home in 1990. This procedure represents a variation of the usual residence rule. In this case, however, the Census Bureau believes that due to the nature of the population subgroup, this procedure follows legal requirements.

6. CREWS OF MERCHANT VESSELS

In previous censuses, the Census Bureau counted crew members aboard U.S. ocean-going, coastal, and Great Lakes vessels at the port where the ship was berthed on Census Day. If the ship was not berthed in a

U.S. port but was in U.S. territorial waters, we counted the crew at the port of destination, provided that port was inside the United States or its territories. If in territorial waters and headed overseas, we counted the crew at the vessel's homeport. If not in territorial waters, we did not count them. We did not make a special attempt to count persons aboard various other types of ships such as those on inland waterways, fishing vessels, or oil rigs. For 1980, the Census Bureau understood that the crews of these ships tend to be gone from home only a short period of time. Thus, we assumed that a household respondent or neighbor reported them at the usual residence.

Operational factors as well as adherence to the usual residence concept guide the Census Bureau's decision on counting this population subgroup in 1990. Crews of merchant vessels are very transient; while many have no home other than the ship on which they work, others do maintain a home on shore that they consider to be their usual residence. Therefore, the usual residence rule requires that we count them at that usual residence, whether on board ship or on shore.

For crew members whose residence is on board ship, the Census Bureau has options on where to pinpoint the ship geographically on Census Day. The use of homeport is one option, but homeports tend to be chosen for tax purposes; the crew generally does not live there and the ship may never dock there. Enumerating the crew at the port where the ship is docked on Census Day is an option that appears preferable. Similarly, for ships that are not berthed in a U.S. port on Census Day and are in territorial waters, the Census Bureau will count the crew at the port of destination, provided that the port is within the United States or the U.S. territories. If the port of destination is not in the United States or its territories, we will count the crew at the ship's port of departure. We will not count the crews of merchant ships that are not within territorial waters or that are not American flag vessels.

The Census Bureau plans to treat crews of canneries, freezer ships, and tuna ships the same as ocean-going vessels in the 1990 census. The crews of these vessels are at sea for several months



during the fishing season. The Census Bureau will count crew members who report a usual residence on shore at that residence.

The Census Bureau also plans to follow the practice of past censuses and not count crews of vessels on inland waterways, fishing vessels which deploy for short period, and oil rigs. The Census Bureau assumes that such persons maintain a residence on shore and that a household respondent or neighbor will report them at that usual residence.

7. LAND-BASED MILITARY PERSONNEL

The Census Bureau traditionally counts land-based members of the Armed Forces, including the U.S. Coast Guard, at the area where they are permanently stationed, provided it is within the United States or the U.S. territories. The use of usual residence to account for members of the Armed Forces is consistent with the criterion used to account for the civilian population.

The Census Bureau also will count military personnel assigned to a temporary duty station at the area of their permanent duty station.

8. CREWS OF MILITARY SHIPS

Before the 1970 census, the criterion used to determine where to count crews of military ships not deployed, including the U.S. Coast Guard, was the actual location of the ship on Census Day. In the 1970 and 1980 censuses, the Census Bureau counted the crews of such ships at the ship's homeport, regardless of the ship's location on Census Day, unless deployed to the 6th (Atlantic) or 7th (Pacific) Fleet. There were exceptions to this policy, however, in the 1980 census. If the ship's homeport contained total military shipboard strength of 1,000 or more, the Census Bureau allowed a crew member to claim a usual home elsewhere if the usual residence was within 50 miles of the port. If we could locate the address for the crew member, we counted the person at the usual residence; otherwise, the ship was the usual residence.[11/] For the 1990 census, the Census Bureau plans to use the usual residence rule to determine where to count crews of military ships not deployed to the 6th or 7th Fleet. If the person's usual residence is the ship, the Census Bureau will count the person at the homeport location. In situations where the

homeport includes more than one jurisdiction, the Census Bureau will count the crew at the jurisdiction where the ship is actually docked. The Census Bureau will allow crew numbers to report a usual residence ashore, regardless of the afloat strength of the homeport. We will attempt to match all such reports to the questionnaire for the home address and to match the person to the appropriate household. Thus, we will count crew members at their usual residence, whether it is on board ship or on shore.

9. MOVERS

Although resident citizens who move on or near Census Day are part of the resident population, obtaining accurate counts of this population subgroup has been operationally difficult in recent censuses.

The basic issue about counting movers concerns the application of the usual residence concept. Theoretically, the Census Bureau could count persons who move on or near Census Day at their old residence, at their new residence, or at a temporary residence. Thus, the operational problem is one of ensuring that we contact movers at one of the three possible locations but count them at only one. In 1990, the Census Bureau plans to develop enumerator and respondent instructions designed to ensure that we count movers at their usual residence as of Census Day. Thus, the Census Bureau will ask for the Census Day address of persons who moved on or near Census Day and who report that we have not already counted them at that address. We will count such persons at that Census Day address.

10. MIGRANT WORKERS

Before the 1980 census, we counted residents of migrant worker camps at the locality that contained the camp, the justification was that the camps have shifting populations composed mainly of persons with no fixed residence. Research after 1970 showed that many migrant workers did in fact have a place they considered as their usual residence. Thus, in the 1980 census, the Census Bureau gave residents of migrant worker camps the option of designating a usual residence other than at the camp where we contacted them. Based on their response, we counted them either at the reported usual residence or at the camp where we contacted them. 10/



For the 1990 census, the Census Bureau plans to continue the practice of allowing residents of migrant worker camps to designate a usual residence other than the camp. We will count them at the usual residence if they report one. If they do not report a usual residence we will count them at the migrant worker camp.

11. INSTITUTIONALIZED RESIDENTS

The institutionalized population consists of all residents living under formally authorized, supervised care or custody. The facilities that house this population include correctional schools, penitentiaries, wards for juveniles, specialized hospitals, nursing homes for the elderly, and homes for the physically and mentally handicapped.11/

For the 1990 census, the Census Bureau plans to differentiate between long-term and short-term facilities. We will count persons residing in long-term facilities (for example, penitentiaries, and mental hospitals) as residents of the institution. The Census Bureau will count persons residing in short-term facilities (for example, county jails and general hospitals) at their usual place of residence if they have one. This practice is consistent with the practices of recent censuses in applying the usual residence concept to persons residing in such facilities.

V. CONCLUSION

Enumeration and residence concepts for the 1990 census provide the basic framework for meeting the goal of the census. We will achieve that goal by appropriate strategies, methods, and procedures. Developing the universe of interest within the legal parameters by carefully defining who and where to count is a critical component of the Census Bureau's concept of enumeration for the 1990 census.

In addressing whom to count, the concept of enumeration for 1990 is based on the Constitution and applicable statutory law which the Census Bureau has traditionally understood to require that all residents, regardless of citizenship or legal status, are part of the universe of interest which we must attempt to count. The first Census Act of 1790, based on an understanding of the constitutional mandate, established the concept of counting residents, not just citizens, and is consistent with the conceptual basis for the past 20 censuses.

The first census also established the concept of usual residence, and that is the conceptual basis for determining where to count persons in the 1990 census. The adoption of a usual residence concept is consistent with the goal of obtaining accurate counts at all geographic levels as well.

The enumeration and residence concepts for 1990 will ensure that the 21st Decennial Census of Population and Housing is the most complete and accurate of any in our country's history.



## NOTES


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8/ Courtland, S., Memorandum to Peter Bounpane, July 13, 1984, Subject: Legal Issues Relating to the 1990 Census: Memorandum No. 1. U.S. Bureau of the Census, Washington, D.C.

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NOT This Report is not reproduced with the Stipulation of Facts because it appears at pages 181-211 of the Administrative Record

Attachment 2

Exhibit B

# DECENNIAL CENSUS RESIDENCE RULES AND ENUMERATION PRINCIPLES

A Report

Prepared for the Bureau of the Census by

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February 1987

# APPENDIX E.
# Facsimiles of Respondent Instructions and Questionnaire Pages

## Your Guide for the

# 1990 U.S. Census Form

This guide gives helpful information on filling out your census form. If you need more help, call the local U.S. census office. **The telephone number is on the cover of the questionnaire.** After you have filled out your form, please return it in the **envelope** we have provided.


| On the inside | Page |
|---|---|
| **How** to fill out your census form | 2 |
| **Example** | 2 |
| **Your** answers are confidential | 2 |
| **Instructions** for the census questions | 3–5 |
| **What** the census is about | 5 |
| **Why** the census asks certain questions | 5 |


CENSUS '90

U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

EXHIBIT B



## How to Fill Out Your Census Form

Please use a black lead pencil only. Black lead pencil is better to use than ballpoint or other pens. Most questions ask you to fill in the circle, or to print the information. See Example below.

Make sure you print answers for everyone in this household. If someone in the household, such as a roomer or boarder, does not want to give you all the information for the form, print at least the person's name and answer questions 2 and 3. A census taker will call to get the other information directly from the person.

There may be a question you cannot answer exactly. For example, you might not know the age of an elderly person or the price for which your house would sell. Ask someone else in your household; if no one knows, give your best estimate.

Instructions for individual questions begin on page 3 of this guide. They will help you to understand the questions and answer them correctly.

If you have a question about filling out the census form or need assistance, call the local U.S. census office. The telephone number is given on the cover of the questionnaire.

If you do not mail back your census form, a census taker will be sent out to assist you. But it saves time and your taxpayer dollars if you fill out the form yourself and mail it back.

### Example

| a. Age | b. Year of birth | a. Age | b. Year of birth |
|---|---|---|---|
| 41 | 1949 | 09 | 1981 |

## Your Answers Are Confidential

The law authorizing the census (Title 13, U.S. Code) also provides that your answers are confidential. No one except census workers may see your completed form and they can be fined and/or imprisoned for any disclosure of your answers. Only after 72 years can your individual census form become available to other government agencies (whether federal, state, county, or local). Until then, no other person or business can see your individual report.

The same law that protects the confidentiality of your answers requires that you provide the information asked in this census to the best of your knowledge.

Information collected from the decennial census is used for a variety of statistical purposes. Census information is used to find out where funding is most needed for schools, health centers, highways, and other services. Census results are used by members of public and private groups—including community organizations—and by businesses and industries, as well as by agencies at all levels of government.

## Instructions for Questions 1a through 7

**1a.** List everyone who lives at this address in question 1a. If you are not sure if you should list a person, see the rules on page 1 of the census form. If you are still not sure, answer as best you can and fill in "Yes" for question H1a or H1b, as appropriate.

If there are more than seven people in your household, please list all the persons in question 1a, complete the form for seven people, and mail it back in the enclosed envelope. A census taker will call to obtain the information for the additional persons.

**b.** If everyone listed in question 1a usually lives at another address(es), print the address(es) in 1b.

**2.** Fill one circle to show how each person is related to the person in column 1.

If Other relative of the person in column 1, print the exact relationship such as son-in-law, daughter-in-law, grandparent, nephew, niece, mother-in-law, father-in-law, cousin, and so on.

If the **Stepson/stepdaughter** of the person in column 1 also has been legally adopted by the person in column 1, mark **Stepson/stepdaughter** but do not mark **Natural-born or adopted son/daughter**. In other words, **Stepson/stepdaughter** takes precedence over **Adopted son/daughter**.

**4.** Fill ONE circle for the race each person considers himself/herself to be.

If you fill the **Indian (Amer.)** circle, print the name of the tribe or tribes in which the person is enrolled. If the person is not enrolled in a tribe, print the name of the principal tribe(s).

If you fill the **Other API** circle (under Asian or Pacific Islander (API)), only print the name of the group to which the person belongs. For example, the Other API category includes persons who identify as Burmese, Fijian, Hmong, Indonesian, Laotian, Bangladeshi, Pakistani, Tongan, Thai, Cambodian, Sri Lankan, and so on.

If you fill the **Other** race circle, be sure to print the name of the race.

If the person considers himself/herself to be **White, Black or Negro, Eskimo or Aleut**, fill one circle only. Please do not print the race in the boxes.

The **Black or Negro** category also includes persons who identify as African-American, Afro-American, Haitian, Jamaican, West Indian, Nigerian, and so on.

All persons, regardless of citizenship status, should answer this question.

**5.** Print age at last birthday in the space provided (print "00" for babies less than 1 year old). Fill in the matching circle below each box. Also, print year of birth in the space provided. Then fill in the matching circle below each box. For an illustration of how to complete question 5, see the Example on page 2 of this guide.

**6.** If the person's only marriage was annulled, mark **Never married**.

**7.** A person is of **Spanish/Hispanic origin** if the person's origin (ancestry) is Mexican, Mexican-Am., Chicano, Puerto Rican, Cuban, Argentinean, Colombian, Costa Rican, Dominican, Ecuadoran, Guatemalan, Honduran, Nicaraguan, Peruvian, Salvadoran, from other Spanish-speaking countries of the Caribbean or Central or South America, or from Spain.

If you fill the **Yes, other Spanish/Hispanic** circle, print one group.

A person who is not of Spanish/Hispanic origin should answer this question by filling the **No (not Spanish/Hispanic)** circle. Note that the term "Mexican-Am." refers only to persons of Mexican origin or ancestry.

All persons, regardless of citizenship status, should answer this question.

## Instructions for Questions H1a through H6

**H1a.** Refer to the list of persons you entered in question 1a on page 1. If you left anyone out of your list because you were not sure if the person(s) should be listed, answer question H1a as Yes. Then enter the name(s) and reason(s) why you did not list the person(s) on the lines provided. Otherwise, answer question H1a as No.

**b.** If you included anyone on your list even though you were not sure that you should list the person(s), answer question H1b as Yes. Then enter the name(s) and reason(s) why you listed the person(s) on the lines provided. Otherwise, answer question H1b as No.

**H2.** Fill only one circle.

Count all occupied and vacant apartments in the house or building. Do not count stores or office space.

*Detached* means there is open space on all sides, or the house is joined only to a shed or garage. *Attached* means that the house is joined to another house or building by at least one wall that goes from ground to roof. An example of A **one-family house attached** to one or more houses is a house in a row of houses attached to one another.

A mobile home or trailer that has had one or more rooms added or built onto it should be counted as a **one-family detached house**; a porch or shed is not considered a room.

**H3.** Count only whole rooms in your house, apartment, or mobile home used for living purposes, such as living rooms, dining rooms, kitchens, bedrooms, finished recreation rooms, family rooms, etc. Do not count bathrooms, kitchenettes, strip or pullman kitchens, utility rooms, foyers, halls, half-rooms, porches, balconies, unfinished attics, unfinished basements, or other unfinished space used for storage.

**H4.** Housing is owned if the owner or co-owner lives in it. Mark **Owned by you or someone in this household with a mortgage or loan** if the house, apartment, or mobile home is mortgaged or there is a contract to purchase. Mark **Owned by you or someone in this household free and clear (without a mortgage)** if there is no mortgage or other debt. If the house, apartment, or mobile home is owned but the land is rented, mark this question to show the status of the house, apartment, or mobile home.

Mark **Rented for cash rent** if any money rent is paid, even if the rent is paid by persons who are not members of your household, or by a federal, state, or local government agency.

Mark **Occupied without payment of cash rent** if the unit is not owned or being bought by the occupants and if money rent is not paid or contracted. The unit may be owned by friends or relatives who live elsewhere and who allow occupancy without charge. A house or apartment may be provided as part of wages or salary. Examples are: caretaker's or janitor's house or apartment; parsonages; tenant farmer or sharecropper houses for which the occupants do not pay cash rent; or military housing.

**H5a.** Answer H5a and H5b if you live in a one-family house or mobile home; include only land which you own or rent.

**b.** A business is easily recognized from the outside; for example, a grocery store or barber shop. A medical office is a doctor's or dentist's office regularly visited by patients.

**H6.** If this is a house, include the value of the house, the land it is on, and any other structures on the same property. If the house is owned but the land is rented, estimate the combined value of the house and the land. If this is a condominium unit, estimate the value for your house or apartment including your share of the common elements. If this is a mobile home, include the value of the mobile home and the value of the land. If you rent the land, estimate the value of the rented land and add it to the value of the mobile home.

## Instructions for Questions H7a and H7b

**H7a.** Report the rent agreed to or contracted for, even if the rent for your house, apartment, or mobile home is unpaid or paid by someone else.

| If rent is paid: | Multiply rent by: | If rent is paid: | Divide rent by: |
|---|---|---|---|
| By the day | 30 | 4 times a year | 3 |
| By the week | 4 | 2 times a year | 6 |
| Every other week | 2 | Once a year | 12 |

**b.** Answer Yes if meals are included in the monthly rent payment, or you must contract for meals or a meal plan in order to live in this building.

## What the Census Is About – Some Questions and Answers

**Why are we taking a census?**

The most important reason for taking a decennial census is to determine how many representatives each state will have in Congress.

**What does the Census Bureau do with the information you provide?**

The individual information collected in the census is grouped together into statistical totals. Information such as the number of persons in a given area, their ages, educational background, the characteristics of their housing, etc., enable government, business, and industry to plan more effectively.

**How long have we been taking the census?**

The first census was taken in 1790 in accordance with the requirement in the first article of the constitution. A census has been taken every 10 years since. The 1990 Decennial Census marks the 200th anniversary of the census.

**How are you being counted?**

Census forms are delivered to all households a few days before census day. Households are requested to fill out the form and mail it back to the census office.

## Why the Census Asks Certain Questions

**Here are a few reasons for asking some of the questions.**

*It is as important to get information about people and their houses as it is to count them.*

**Name?** Names help make sure that everyone in a household is counted, but that no one is counted twice.

**Value or rent?** Government and planning agencies use answers to these questions in combination with other information to develop housing programs to meet the needs of people at different economic levels.



CENSUS '90

# OFFICIAL 1990 U.S. CENSUS FORM

Thank you for taking time to complete and return this census questionnaire. It's important to you, your community, and the Nation.

**The law requires answers but guarantees privacy.**

By law (Title 13, U.S. Code), you're required to answer the census questions to the best of your knowledge. However, the same law guarantees that your census form remains confidential. For 72 years–or until the year 2062–only Census Bureau employees can see your form. No one else–no other government body, no police department, no court system or welfare agency–is permitted to see this confidential information under any circumstances.

**How to get started–and get help.**

Start by listing on the next page the names of all the people who live in your home. Please answer all questions with a black lead pencil. You'll find detailed instructions for answering the census in the enclosed guide. If you need additional help, call the toll-free telephone number to the left, near your address.

**Please answer and return your form promptly.**

Complete your form and return it by April 1, 1990 in the postage-paid envelope provided. Avoid the inconvenience of having a census taker visit your home.

**Again, thank you for answering the 1990 Census.**
**Remember: Return the completed form by April 1, 1990.**

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**Para personas de habla hispana –**
*(For Spanish-speaking persons)*

Si usted desea un cuestionario del censo en español, llame sin cargo alguno al siguiente número: 1-800-CUENTAN
(o sea 1-800-283-6826)

U.S. Department of Commerce
BUREAU OF THE CENSUS

FORM D-1

OMB No. 0607-0638
Approval Expires 07/31/91

The 1990 census must count every person at his or her "usual residence." This means the place where the person lives and sleeps most of the time.

**1a. List on the numbered lines below the name of each person living here on Sunday, April 1, including all persons staying here who have no other home. If EVERYONE at this address is staying here temporarily and usually lives somewhere else, follow the instructions given in question 1b below.**

| Include | Do NOT include |
|---|---|
| • Everyone who usually lives here such as family members, housemates and roommates, foster children, roomers, boarders, and live-in employees | • Persons who usually live somewhere else |
| • Persons who are temporarily away on a business trip, on vacation, or in a general hospital | • Persons who are away in an institution such as a prison, mental hospital, or a nursing home |
| • College students who stay here while attending college | • College students who live somewhere else while attending college |
| • Persons in the Armed Forces who live here | • Persons in the Armed Forces who live somewhere else |
| • Newborn babies still in the hospital | |
| • Children in boarding schools below the college level | |
| • Persons who stay here most of the week while working even if they have a home somewhere else | • Persons who stay somewhere else most of the week while working |
| • Persons with no other home who are staying here on April 1 | |

Print last name, first name, and middle initial for each person. Begin on line 1 with the household member (or one of the household members) in whose name this house or apartment is owned, being bought, or rented. If there is no such person, start on line 1 with any adult household member.

| | LAST | FIRST | INITIAL | | LAST | FIRST | INITIAL |
|---|---|---|---|---|---|---|---|
| 1 | | | | 7 | | | |
| 2 | | | | 8 | | | |
| 3 | | | | 9 | | | |
| 4 | | | | 10 | | | |
| 5 | | | | 11 | | | |
| 6 | | | | 12 | | | |

**1b. If EVERYONE is staying here only temporarily and usually lives somewhere else, list the name of each person on the numbered lines above, fill this circle ⟶ ○ and print their usual address below. DO NOT PRINT THE ADDRESS LISTED ON THE FRONT COVER.**

House number — Street or road/Rural route and box number — Apartment number

City — State — ZIP Code

County or foreign country — Name of nearest intersecting streets or roads

***NOW PLEASE OPEN THE FLAP TO PAGE 2 AND ANSWER ALL QUESTIONS FOR THE FIRST 7 PEOPLE LISTED. USE A BLACK LEAD PENCIL ONLY.***





PLEASE ALSO ANSWER HOUSING QUESTIONS ON PAGE 3 ⟶

Please fill one column ➡ for each person listed in Question 1a on page 1.

| | PERSON 1 | PERSON 2 |
|---|---|---|
| | Last name / First name / Middle name | Last name / First name / Middle name |
| **2. How is this person related to PERSON 1?**<br>Fill ONE circle for each person.<br>If Other relative of person in column 1, fill circle and print exact relationship, such as mother-in-law, grandparent, son-in-law, niece, cousin, and so on. | START in this column with the household member (or one of the members) in whose name the home is owned, being bought, or rented.<br>If there is no such person, start in this column with any adult household member. | If a RELATIVE of Person 1:<br>○ Husband/wife ○ Brother/sister<br>○ Natural-born or adopted son/daughter ○ Father/mother ○ Grandchild ○ Other relative 7<br>○ Stepson/stepdaughter<br>If NOT RELATED to Person 1:<br>○ Roomer, boarder, or foster child ○ Unmarried partner<br>○ Housemate, roommate ○ Other nonrelative |
| **3. Sex**<br>Fill ONE circle for each person. | ○ Male ○ Female | ○ Male ○ Female |
| **4. Race**<br>Fill ONE circle for the race that the person considers himself/herself to be.<br>If Indian (Amer.), print the name of the enrolled or principal tribe.<br>If Other Asian or Pacific Islander (API), print one group, for example: Hmong, Fijian, Laotian, Thai, Tongan, Pakistani, Cambodian, and so on.<br>If Other race, print race. | ○ White<br>○ Black or Negro<br>○ Indian (Amer.) (Print the name of the enrolled or principal tribe.) 7<br>○ Eskimo<br>○ Aleut<br>Asian or Pacific Islander (API)<br>○ Chinese ○ Japanese<br>○ Filipino ○ Asian Indian<br>○ Hawaiian ○ Samoan<br>○ Korean ○ Guamanian<br>○ Vietnamese ○ Other API 7<br>○ Other race (Print race) | ○ White<br>○ Black or Negro<br>○ Indian (Amer.) (Print the name of the enrolled or principal tribe.) 7<br>○ Eskimo<br>○ Aleut<br>Asian or Pacific Islander (API)<br>○ Chinese ○ Japanese<br>○ Filipino ○ Asian Indian<br>○ Hawaiian ○ Samoan<br>○ Korean ○ Guamanian<br>○ Vietnamese ○ Other API 7<br>○ Other race (Print race) |
| **5. Age and year of birth**<br>a. Print each person's age at last birthday. Fill in the matching circle below each box.<br>b. Print each person's year of birth and fill the matching circle below each box. | a. Age / b. Year of birth<br>0 0 0 0 ○<br>1 ○ 1 ○ 1<br>2 ○ 2 ○ 2<br>3 ○ 3 ○ 3<br>4 ○ 4 ○ 4<br>5 ○ 5 ○ 5<br>6 ○ 6 ○ 6<br>7 ○ 7 ○ 7<br>8 ○ 8 ○ 8<br>9 ○ 9 ○ 9<br>1 ● 8 ○ 0 ○ 0 ○<br>9 ○ 1 ○ 1 ○<br>2 ○ 2 ○ 2<br>3 ○ 3 ○ 3<br>4 ○ 4 ○ 4<br>5 ○ 5 ○ 5<br>6 ○ 6 ○ 6<br>7 ○ 7 ○ 7<br>8 ○ 8 ○ 8<br>9 ○ 9 ○ 9 | a. Age / b. Year of birth<br>0 0 0 ○ 0 0<br>1 ○ 1 ○ 1 ○<br>2 ○ 2 ○ 2<br>3 ○ 3 ○ 3<br>4 ○ 4 ○ 4<br>5 ○ 5 ○ 5<br>6 ○ 6 ○ 6<br>7 ○ 7 ○ 7<br>8 ○ 8 ○ 8<br>9 ○ 9 ○ 9<br>1 ● 8 ○ 0 ○ 0 ○<br>9 ○ 1 ○ 1 ○<br>2 ○ 2 ○ 2<br>3 ○ 3 ○ 3<br>4 ○ 4 ○ 4<br>5 ○ 5 ○ 5<br>6 ○ 6 ○ 6<br>7 ○ 7 ○ 7<br>8 ○ 8 ○ 8<br>9 ○ 9 ○ 9 |
| **6. Marital status**<br>Fill ONE circle for each person. | ○ Now married ○ Separated<br>○ Widowed ○ Never married<br>○ Divorced | ○ Now married ○ Separated<br>○ Widowed ○ Never married<br>○ Divorced |
| **7. Is this person of Spanish/Hispanic origin?**<br>Fill ONE circle for each person.<br>If Yes, other Spanish/Hispanic, print one group. | ○ No (not Spanish/Hispanic)<br>○ Yes, Mexican, Mexican-Am., Chicano<br>○ Yes, Puerto Rican<br>○ Yes, Cuban<br>○ Yes, other Spanish/Hispanic (Print one group, for example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.) 7 | ○ No (not Spanish/Hispanic)<br>○ Yes, Mexican, Mexican-Am., Chicano<br>○ Yes, Puerto Rican<br>○ Yes, Cuban<br>○ Yes, other Spanish/Hispanic (Print one group, for example: Argentinean, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on.) 7 |
| **FOR CENSUS USE** ⟶ | ○<br>○ | ○<br>○ |

Exhibit C

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

APR 14 1988

Honorable James C. Miller III
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Miller:

This responds to your request for the views of the Department of Justice on H.R. 3639, a bill to prevent distortions in the reapportionment of the House of Representatives caused by the use of census population figures which include aliens, and H.R. 3814, "Relating to decennial censuses of population." In principal part, H.R. 3639 would eliminate illegal aliens from the United States census tabulation when apportioning representatives in Congress among the states. Like H.R. 3639, H.R. 3814 would exclude illegal aliens from the census count. It would include for apportionment purposes, however, members of the armed forces, civilian employees of the Department of Defense, and dependents of such members or employees, living overseas. For the reasons discussed below, we oppose passage of these bills because they raise serious constitutional problems.

Section two of the Fourteenth Amendment to the Constitution provides that:

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.

U.S. Const., amend. XIV, sec. 2.[1] This constitutional provision

[1] Section 2 replaces, in part, the provision in Article I, sec. 2, cl. 3 of the Constitution that provided:

> Representatives . . . shall be apportioned among the several States . . . according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons . . . three fifths of all other Persons.

Although we have not found any cases interpreting the breadth of

is implemented by 13 U.S.C. 141(b).[2] Section 2 of H.R. 3639 would add a new paragraph (g) to 13 U.S.C. 141 to require the Secretary of Commerce to

> make such adjustments in total population figures as may be necessary, using such methods and procedures as the Secretary determines appropriate, in order that aliens in the United States in violation of the immigration laws shall not be counted in tabulating population for purposes of subsection (b) of this section.

The legislative history accompanying section 2 of the Fourteenth Amendment makes clear that Congress intended for all persons, including aliens residing in this country, to be included in the "whole number of persons in each State." Id.

The end of the Civil War and the freeing of the slaves meant an end to apportionment based on the "three fifths" provision of Article 1. See note 1. The Reconstruction Congress realized that once readmitted, the former Confederate states would increase their population base by forty percent, adding twelve Representatives to their pre-war total of eighteen.[3] In an effort to undermine this growth in political power before these states were readmitted to the Union, the Thirty-ninth Congress examined various formulas designed to reduce representation whenever states, as expected, discriminated against portions of their male population by excluding them from voting on the basis of race.

For example, there was significant support in the Thirty-Ninth Congress for a proposal that representation be based on the number of male voters over the age of twenty-one. See, e.g., Cong. Globe, 39th Cong., 1st Sess. 404 (1866). However, this

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[1] (Cont.) Article I, the Founding Fathers were aware that the census, and therefore apportionment, would be based on the number of State inhabitants, not of voters. See, e.g., The Federalist Papers (C. Rossiter, ed.), No. 54, at 338.

[2] Section 141(b) provides:

> The tabulation of total population by States under [the census] as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.

[3] G. Zuckerman, A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment, 30 Ford. L. Rev. 93, 94 (1961) (Zuckerman).



proposal met serious resistance from many of the Northern states, especially in New England. These states had disproportionately large populations of nonvoters, such as women (large numbers of men had left their homes to pioneer in the west) and aliens.[4] As Rep. Conkling, one of the original drafters of the Fourteenth Amendment, noted when defending his amendment to count persons rather than citizens, "[m]any of the large States now hold their representation in part by reason of their aliens, and the Legislatures and people of these States are to pass upon the amendment. It must be acceptable to them." Cong. Globe, 39th Cong., 1st Sess. 353 (1866).

Faced with extensive debate over the amendment's language, the Republicans became concerned that the measure would not pass the Senate.[5] They therefore went into caucus, agreeing to be bound by its decision, and adopted the present language regarding "persons" rather than "citizens." Notwithstanding the protests of opponents who bitterly denounced this language as nothing more than a political compromise designed to ensure passage of the amendment,[6] the Republicans held the majority and the amendment, apportioning representation on the "whole number of persons" in each state, was passed.

Thus, the Congress that passed the Fourteenth Amendment in 1866 not only recognized that aliens would be counted in the census but insisted upon their inclusion as part of a compromise designed to ensure that the amendment would be passed by the industrial states. They did so notwithstanding their acknowledgment that aliens were not bona fida members of the body politic.

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[4] Zuckerman, supra note 3, at 95. As Sen. Wilson noted:

> How [does this proposal affect] the loyal States? It throws out of the basis at least two and a half millions of unnaturalized foreign-born men and women, and by this we lose at least fifteen Representatives . . . . In 1860 there were in the loyal States 3,856,628 unnaturalized persons of foreign birth, and in the rebel States 233,661. I estimate that Massachusetts would lose one Representative certainly, and probably two, by this change; that New York would lose at least four, Pennsylvania two, Ohio two; and other States would lose in their representation.

Cong. Globe, 39th Cong., 1st Sess. 1286 (1866).

[5] Zuckerman, supra note 3, at 105.

[6] Cong. Globe, 39th Cong., 1st Sess. 404, 408 (1866) (statement of Rep. Lawrence). See also id. at 2939 (statement of Sen. Hendricks).

They rejected arguments that representation should be based on people with permanent ties to the country. They consciously chose to include aliens to advance their dual concerns: ensuring passage of the amendment by the northern states and denial to the South of any additional representation in Congress.

It is noteworthy that the Supreme Court, in analyzing section 1 of the Fourteenth Amendment, has read the word "person" to include illegal aliens. "Whatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments." Plyler v. Doe, 457 U.S. 202, 210 (1982) (citations omitted), reh'g denied 458 U.S. 1131 (1982). It would seem reasonable to assume that those whom the drafters of the Fourteenth Amendment intended to include in the word "persons" in section 1 of the amendment are the same "persons" included by section 2.

We must note that the Reconstruction Congress did not discuss the issue of illegal aliens when it debated the Fourteenth Amendment. It was, however, possible to be an illegal alien in 1866. The United States has had a statute since 1798 governing arrest and exclusion of aliens from hostile countries. Act of July 6, 1798, ch. 66, 1 Stat. 577 (Act), codified at 50 U.S.C. 21. The President is authorized to arrest, secure and remove, with the aid of the courts and the federal marshals, any such aliens he identifies. Moreover, this statutory authority had been exercised prior to 1866.[9] Thus, although the issue was not raised in the debate over the Fourteenth Amendment, certain classes of aliens could be excluded from the United States in 1866 and removed by order of the President if they attempted to return.[10]

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[7] See generally Note, Demography and Distrust: Constitutional Issues of the Federal Census, 94 Harv. L. Rev. 861, 865-68 (1981).

[8] C. Gordon and M. Rosenfeld, 1 Immigration Law & Procedure, at 1-8 (1985).

[9] Lockington v. Smith, 15 Fed. Cas. 758 (C.C. Pa. 1817) (No. 8448); Lockington's Case, Brightly N.P. 269 (Pa. 1813).

[10] Moreover, subsequent Congresses have acknowledged, by their efforts to exclude aliens from the census, that the Fourteenth Amendment requires the counting of all aliens. The 71st and 72nd Congresses debated passage of constitutional amendments that would have excluded aliens in the count for apportionment of representatives. See H.R. Rep. 2761, 71st Cong., 3d Sess. (1931); H.R. Rep. 823, 72d Cong., 1st Sess. (1932). The Senate legal counsel had earlier issued an opinion concluding that aliens could not be excluded. 71 Cong. Rec. 1821 (1929). In 1940, a bill to exclude aliens was defeated. See e.g., 86 Cong.



The Department of Justice has advised previous Congresses considering identical legislation that aliens must be included within the census for purposes of apportioning congressional Representatives,[11] and has adopted that position in court.[12] We have reexamined this position and continue to believe that it is *sound*. Accordingly, we find that to the extent that H.R. 3639 and H.R. 3814 would exclude illegal aliens from the census, they are unconstitutional.

We turn now to the question of whether it is constitutional to include in any tabulation of population for purposes of the apportionment any members of the armed forces, civilian employees of the Department of Defense (DOD), or dependents of such members or employees, when any such individuals are assigned to a post outside the United States. While we continue to review the case law and legislative history pertinent to resolution of this question, we note that throughout the debates on section 2 of the Fourteenth Amendment, there seems to be a premise that the census would count inhabitants of the United States, and not individuals who did not reside in one of the states.[13] Accordingly, we entertain serious doubts as to the constitutionality of any legislation that would seek to include for apportionment purposes military personnel, DOD civilian employees, or their dependents, when such individuals live outside the United States. We therefore must oppose passage of this provision in H.R. 3814 at this time.

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[10] (Cont.) Rec. 4372 (1940) (statement of Rep. Celler) ("If you want aliens out, you must amend the Constitution").

[11] See e.g., Testimony of David A. Strauss, Attorney-Adviser, Office of Legal Counsel, 1980 Census: Counting Illegal Aliens, Hearing on S. 2166 Before the Subcomm. on Energy, Nuclear Proliferation and Federal Services of the Senate Comm. on Governmental Affairs, 96th Cong., 2d Sess., at 98 (1980) (Hearing).

[12] See Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss the Action or, in the Alternative, for Summary Judgement and in Opposition to Plaintiff's Application for a Preliminary Injunction, filed in Federation for American Immigration Reform v. Klutznick, 486 F. Supp. 564, 576-77 (D.D.C.) (3-judge court) (FAIR), appeal dismissed, 447 U.S. 916 (1980). The Memorandum is reprinted in the Hearings, supra note 11, at 128. The FAIR court endorsed the government's position in dictum. See 486 F. Supp. at 576-77 (reading section 2 to include all aliens) (dictum).

[13] The Department of Commerce advises that the Census Bureau has never counted for apportionment purposes U.S. Ambassadors, military personnel or State Department personnel stationed abroad. The Bureau's practice is based upon the concept of usual residence, which historically has been defined as where a person

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Jack E. Parkins for

Thomas M. Boyd
Acting Assistant Attorney General

Exhibit D

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[13] (Cont.) lives and sleeps most of the time.

## POSSIBLE 1990 APPORTIONMENTS FOR MASSACHUSETTS UNDER VARIOUS METHODS

| | EXACT Q | ADAM | HARM | EQPR | WEBS | JEFF | HAM |
|---|---|---|---|---|---|---|---|
| Apportionment Population | 10.532 | 10 | 10 | 10 | 11 | 11 | 11 |
| Resident Population | 10.549 | 10 | 10 | 11 | 11 | 11 | 11 |

EXACT Q = EXACT QUOTA (The integer and fraction of seats due a state given its population)
ADAM = ADAMS (SMALLEST DIVISORS) METHOD - Never used
HARM = DEAN (HARMONIC MEAN) METHOD - Never used
EQPR = EQUAL PROPORTIONS (HILL) METHOD - Used 1940-1990
WEBS = WEBSTER (MAJOR FRACTIONS) METHOD - Used 1840, 1880-1910, 1930
JEFF = JEFFERSON (GREATEST DIVISORS) METHOD - Used 1790-1830
HAM = HAMILTON/VINTON METHOD - Used 1850-1870